

# SWIDLER BERLIN LLP

2005 JUN -9 PM 1:32  
T.R.A. DOCKET ROOM

The Washington Harbour  
3000 K Street, N W , Suite 300  
Washington, D C 20007-5116  
Phone 202 424 7500  
Fax 202 424 7647  
www.swidlaw.com

## BY OVERNIGHT MAIL

June 8, 2005

Sharla Dillon, Dockets & Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

05-00160

**Re: Petition of Eureka Broadband Corporation and A.R.C. Networks, Inc. for  
Authority to Transfer Control of an Authorized Carrier**

Dear Ms. Dillon:

Enclosed for filing with the Authority are an original and thirteen (13) copies of the above-referenced Petition. Also enclosed is a check for \$50 to cover the requisite filing fee.

Please date-stamp the enclosed extra copy of this filing and return it in the attached self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned at (202) 424-7500.

Respectfully submitted,



Catherine Wang  
Brian McDermott  
Danielle C. Burt

cc: Glenn S. Richards, Esq.  
Adam Lewis

PAID T.R.A.	
Chk #	157276
Amount	50.00
Rcvd By	JK
Date	6-9-05

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

In the Matter of the Petition of	)	
	)	
<b>Eureka Broadband Corporation,</b>	)	
	)	
And	)	Docket No. _____
	)	
<b>A.R.C. Networks, Inc.</b>	)	
	)	
For Authority To Transfer Control	)	
of an Authorized Carrier and Related	)	
Transactions	)	

**PETITION**

Eureka Broadband Corporation, d/b/a Eureka Networks ("Eureka") and A.R.C. Networks, Inc. ("A.R.C. Networks," together with Eureka, "Petitioners"), pursuant to Section 65.4.113 of the Tennessee Code, Tenn. Code Ann. § 65-4-113, and the rules of the Tennessee Regulatory Authority (the "Authority"), respectfully request authority to transfer control of A.R.C. Networks to Eureka. In particular, Eureka has entered into an agreement with A.R.C. Network's ultimate and immediate corporate parent, InfoHighway Communications Corporation ("InfoHighway"), through which IH Acquisition Corp. ("Acquisition"), a newly created, wholly owned indirect subsidiary of Eureka, will merge with and into InfoHighway. InfoHighway will be the surviving corporation. As a result of that transaction, InfoHighway and A.R.C. Networks will become wholly owned indirect subsidiaries of Eureka.

The proposed transaction is a stock transaction by which A.R.C. Networks will continue as a going concern. Accordingly, the proposed transaction will not affect the rates, terms or conditions under which A.R.C. Networks provides service in Tennessee. The proposed transaction also will not affect the name under which A.R.C. Networks provides service in Tennessee and will not cause disruption to the services received by A.R.C. Networks' customers.

in Tennessee. As a result, the proposed transaction will be entirely transparent to A.R.C. Networks' end user customers in Tennessee.

Although the proposed transaction will not change the services provided to A.R.C. Networks' customers, Petitioners expect that the proposed transaction will improve their business operations. Specifically, A.R.C. Networks will benefit from the highly qualified and experienced management and financial resources provided by Eureka, although most of the existing management of A.R.C. Networks is expected to continue to oversee on-going operations. Indeed, as described below, Eureka currently holds authority to provide telecommunications services in several states. As a result, Petitioners submit that the proposed transactions will provide A.R.C. Networks access to significant additional resources which will inure to the benefit of its customers. Accordingly, Petitioners respectfully requests that the Authority approve this Petition expeditiously in order to allow the proposed transactions described herein to be consummated as soon as possible.

Petitioners provide the following additional information in support of this Petition:

## **I. DESCRIPTION OF PETITIONERS**

### **A. Eureka Broadband Corporation**

Eureka Broadband Corporation ("Eureka") is a Delaware corporation with offices located at 39 Broadway, New York, New York 10006. Eureka is a privately held corporation which does business under the d/b/a Eureka Networks. Eureka, through its operating subsidiaries, provides a variety of regulated and unregulated services, including facilities-based Internet Services, high-speed Internet access, IP- (Internet protocol-) based application services to business customers with bandwidth-intensive needs and local and long distance voice products. Eureka's primary operations are in the New York City and Washington D.C. metropolitan areas

where Eureka's subsidiaries work with property owners to install network infrastructure and offer high-quality services to building tenants. In addition to access services, the company provides voice and other services to enterprise customers in both on-net and off-net locations. Eureka operating companies have access to nearly 550 pre-wired buildings, including more than 350 buildings in the New York metro area. Eureka's affiliates also holds authority to provide regulated telecommunications services in four states.

Eureka is financially, managerially, and technically qualified to acquire A.R.C. Networks. Eureka's management team is run by Jeffrey Ginsberg, the Chairman of the Board of Eureka and Raul K. Martynek, the President and Chief Executive Officer of Eureka. Mr. Ginsberg is an experienced telecommunications entrepreneur who manages the overall strategic direction of the business, and has in particular, extensive experience in capital raising, mergers and acquisitions and real estate relationships. Mr. Ginsberg was Chairman and CEO of Eureka Broadband, the precursor to Eureka Networks, from June 1999 to December 2000. Mr. Ginsberg has also served as Chairman and founder of Apex Site Management, Inc., a leading real estate/telecommunications management company which was acquired by Spectrasite in 1999. Mr. Ginsberg also co-founded Horizon Cellular Group, which owned and operated 15 cellular systems.

Mr. Martynek has served as the President & CEO of Eureka since 2003. Mr. Martynek was formerly the Chief Operating Officer of Eureka Networks, where he oversaw all corporate operations and was responsible for all facets of the company's voice and data operations, customer care, IT, merger integrations and gross margin enhancement projects. Prior to Eureka Networks, Mr. Martynek was one of the first employees of Gillette Global Networks, joining the company in 1995 and serving in several capacities, including Chief Operating Officer beginning

in 1999. Mr. Martynek has spoken at numerous industry events and is frequently quoted in industry periodicals. Further information on Eureka's management team is provided in Exhibit A.

Eureka is also financially well qualified. Under Mr. Martynek's leadership, Eureka has demonstrated strong recent financial performance. Confidential financial information for Eureka, along with pro forma financial information for the combined companies is provided under seal as Exhibit B.

**B. InfoHighway Communications Corporation**

InfoHighway Communications Corporation ("InfoHighway") is a Delaware corporation with headquarters located at 175 Pinelawn Road, Suite 408, Melville, New York 11747.

InfoHighway provides integrated communications solutions, including end-to-end voice and data communications solutions primarily to business customers in major markets in the northeastern United States and selected areas of Texas. Among other services, through its wholly owned subsidiary, A.R.C. Networks, InfoHighway offers high-quality local and long distance telephone services, point-to-point data services, high-speed Internet services, network design and wiring.

In Tennessee, A.R.C. Networks is authorized to provide interexchange telecommunications services pursuant to an authorization issued in Docket No. 02-01336 on December 2, 2002. Further information regarding InfoHighway and A.R.C Networks has been previously submitted to the Authority, is therefore a matter of public record, and is incorporated herein by reference.

## II. CONTACTS

Questions or any correspondence, orders, or other materials pertaining to this Petition should be directed to:

Catherine Wang  
Brian McDermott  
Danielle C. Burt  
Swidler Berlin LLP  
3000 K Street NW  
Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Tel)  
(202) 424-7645 (Fax)  
[cwang@swidlaw.com](mailto:cwang@swidlaw.com)  
[bmmcdermott@swidlaw.com](mailto:bmmcdermott@swidlaw.com)  
[dcburt@swidlaw.com](mailto:dcburt@swidlaw.com)

With copies to:

Glenn S. Richards  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
202-663-8215 (Tel)  
202-663-8212 (Fax)  
[glenn.richards@pillsburylaw.com](mailto:glenn.richards@pillsburylaw.com)

## III. DESCRIPTION OF TRANSACTION

Eureka and InfoHighway have proposed to complete a transaction through which InfoHighway will become an indirect, wholly owned subsidiary of Eureka. In particular, Eureka and InfoHighway have entered into an Agreement and Plan of Merger ("Agreement") dated as of May 9, 2005. Under the terms of the Agreement, Eureka, IH Acquisition Corporation ("Acquisition") -- a wholly owned indirect subsidiary of Eureka Holdings Incorporated -- will be merged with and into InfoHighway.<sup>1</sup> InfoHighway will survive that merger and will become a

---

<sup>1</sup> Eureka Holdings Incorporated is a recently created, wholly owned subsidiary of Eureka which, following the proposed transaction, will be the direct corporate owner of InfoHighway.

indirect subsidiary of Eureka. In connection with the proposed merger, each share of preferred stock of InfoHighway will be converted into the right to receive a portion of the merger proceeds. Following the proposed transaction, Eureka will indirectly own all of the outstanding stock of InfoHighway. An illustrative chart of the proposed transactions is provided in Exhibit C.

The proposed Transactions will be completed as a stock transaction and A.R.C. Networks will continue to provide services under the same rates, terms and conditions as those services are currently provided in Tennessee. As such, Petitioners expect that the proposed transactions will be entirely transparent to A.R.C. Networks' Tennessee customers. As an equity transaction, the proposed transaction will not affect the name under which A.R.C. Networks operates in Tennessee or cause any assignment of the Tennessee operating authorities held by A.R.C. Networks or by Eureka or its affiliates. The proposed transaction will not cause any service interruptions or discontinuances or have any immediate substantial change on A.R.C. Networks' day to day operations in Tennessee.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

Eureka's acquisition of A.R.C. Networks serves the public interest in promoting competition among telecommunications providers in Tennessee. In particular, the proposed transaction will combine the strengths of Eureka and A.R.C. Networks which should allow the combined companies to compete more effectively against incumbent carriers and larger competitive carriers which have substantial resources and can offer a wide range of facilities based service offerings.

The operations of Petitioners are highly complementary. Eureka has extensive assets concentrated in New York City and the mid-Atlantic region and particular expertise in providing

a variety of voice and data telecommunications and IP products and services. InfoHighway has a substantially wider coverage area and extensive experience in providing regulated services to commercial and residential customers. Petitioners believe that the proposed transaction will enhance the ability of the entities to expand their respective operations both in terms of service area coverage and through the ability of each entity to offer customers an expanded line of products and services. In addition, Petitioners expect that the proposed transaction, by combining Eureka's substantial facilities-based network and A.R.C. Networks' customer base, will yield substantial operational and financial benefits to the combined companies.

Given the increasingly competitive nature of the telecommunications market, Petitioners are seeking to complete the proposed transactions as soon as possible to ensure that customers can rapidly obtain the benefits of the proposed transactions. Accordingly, Petitioners respectfully request that the Authority process, consider, and approve this Petition as expeditiously as possible.



**V. CONCLUSION**

For the foregoing reasons, Petitioners respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Petition.

Respectfully submitted,



Glenn S. Richards  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
202-663-8215 (Tel)  
202-663-8212 (Fax)  
[glenn.richards@pillsburylaw.com](mailto:glenn.richards@pillsburylaw.com)

Catherine Wang  
Brian McDermott  
Danielle C. Burt  
Swidler Berlin LLP  
3000 K Street, Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Tel)  
(202) 424-7645 (Fax)  
[CWang@swidlaw.com](mailto:CWang@swidlaw.com)  
[BMMcDermott@swidlaw.com](mailto:BMMcDermott@swidlaw.com)  
[DCBurt@swidlaw.com](mailto:DCBurt@swidlaw.com)

Counsel for InfoHighway Communications  
Corporation and A.R.C. Networks, Inc.

Counsel for Eureka Broadband  
Corporation

Dated: June 8, 2005

### **LIST OF EXHIBITS**

- Exhibit A      -            Eureka Management Information
- Exhibit B      -            Eureka Financial Information (**Filed Under Seal**)
- Exhibit C      -            Illustrative Chart

Verifications

**EXHIBIT A**

**Eureka Management Information**

## **Management Biographies**

Jeff Ginsberg, Chairman/Founder – Mr. Ginsberg is responsible for the strategic operating relationships and real estate relationship management for the company. Mr. Ginsberg is the driving force behind successful acquisitions, making Eureka Networks the leader it is today.

Previously, Mr. Ginsberg was the Chairman and CEO of Eureka Broadband since June 1999. During his tenure as Chairman and CEO, Eureka Broadband raised \$45 million in equity and executed access agreements for 1,000 office buildings representing over 150 million square feet in five major markets.

Before coming to Eureka Broadband, Mr. Ginsberg was Chairman and founder of Apex Site Management, Inc., a specialized real estate/telecommunications management company that became the leading U.S. firm in this space. Apex, which was capitalized with \$11 million, sold to publicly-traded Spectrasite for \$60 million in December 1999.

Raul Martynek, President & Chief Executive Officer/Founder – Mr. Martynek manages day-to-day operations of the company, including sales, provisioning, customer care, building deployment, network operations, technology, and information systems. Mr. Martynek is an ever-present force ensuring our services are delivered in a reliable manner.

Prior to the Eureka Broadband/Gillette Global Network merger, Mr. Martynek was the Chief Operating Officer of GGN, where he oversaw all corporate operations. Mr. Martynek was one of the first employees of GGN, joining the company in 1995 and served in several capacities, including Executive Vice President and Vice President of MIS.

Before joining GGN, Mr. Martynek worked at several Wall Street firms in trading and operations. He also led a consulting firm specializing in database integration and design.

Ed Kazar, Chief Financial Officer – Mr. Kazar is responsible for executive management and oversight of all financial operations and human resources. Mr. Kazar joined the team in 2001 and has a long history of financial management in telecommunications companies such as Lucent Technologies and Avaya. He provides the leadership it takes to excel in the industry.

Before the formation of Eureka Networks, Mr. Kazar was a finance executive at Lucent Technologies, where he was instrumental in the successful IPO launch of Lucent Technologies and Avaya.

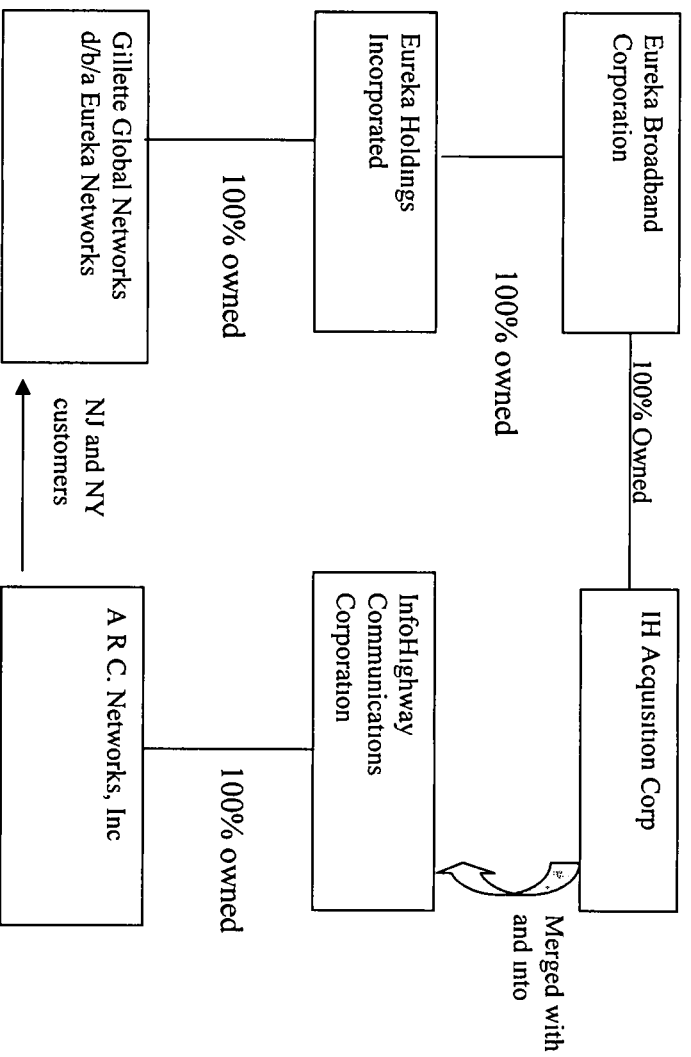
**EXHIBIT B**

**Eureka Financial Information**

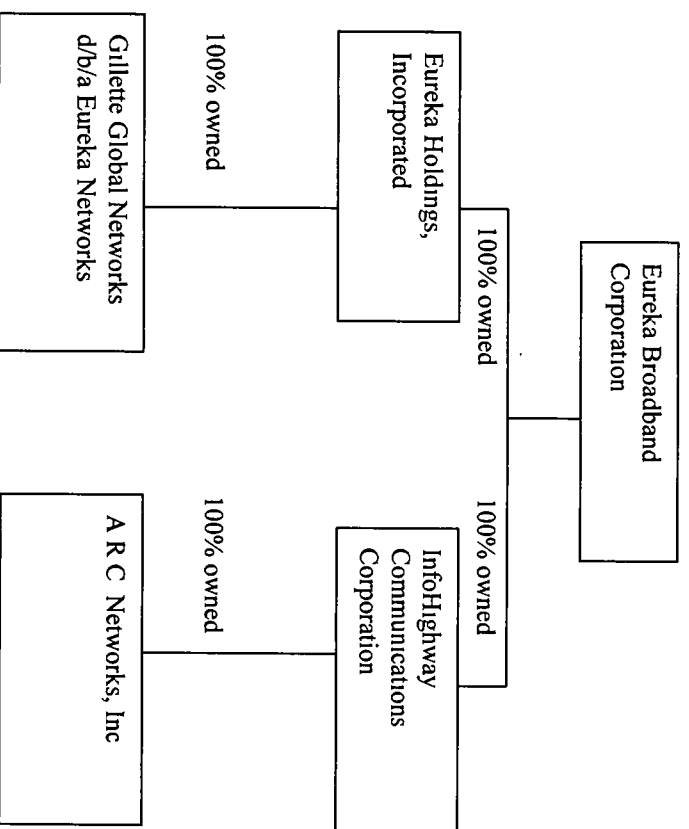
***(Filed Under Seal)***

**EXHIBIT C**

**Illustrative Chart**



## POST TRANSACTION



## **VERIFICATIONS**




## VERIFICATION

STATE OF NEW YORK )  
 )  
 ) SS:  
CITY OF NEW YORK )

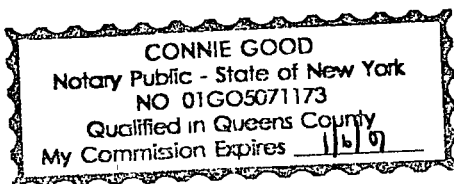
I, JEFFREY E. GINSBERG, being first duly sworn, state that I am CHAIRMAN of Eureka Broadband Corporation , an Applicant in the foregoing Application; that I am authorized to make this Verification on behalf of Eureka Broadband Corporation ; that the foregoing Application was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

  
Name: JEFFREY E. GINSBERG  
Title: CHAIRMAN

Sworn and subscribed before me this 19 day of May, 2005.

  
\_\_\_\_\_  
Notary Public

My commission expires 1/6/07



## VERIFICATION

STATE OF NEW YORK

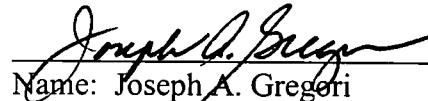
§

COUNTY OF SUFFOLK

§

§

I, Joseph A. Gregori, hereby state that I am the Chief Executive Officer of A.R.C. Networks, Inc.; that I am authorized to make this Verification on behalf of A.R.C. Networks, Inc.; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief



Name: Joseph A. Gregori  
Title: Chief Executive Officer  
A.R C. Networks, Inc.

\_\_\_\_\_  
Joseph A. Gregori

Typed or Printed Name

SWORN TO AND SUBSCRIBED before me on the 1<sup>st</sup> day of June, 2005.



\_\_\_\_\_  
Notary Public

My commission expires: 1/21/07

LOIS CIRAOLLO  
Notary Public, State of New York  
No 01CI5071869  
Qualified in Nassau County  
Commission Expires January 21, 2007